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**BRINKS
HOFER
GILSON
& LIONE**

Our Case No. 659/2080
K-C Ref. No. 19996

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Zander et al.

Serial No.: 10/749,871

Filing Date: December 30, 2003

For: VISUALLY COORDINATED
ABSORBENT PRODUCT

Examiner: Gibson, Keshia L.

Group Art Unit No.: 3761

APPELLANTS' BRIEF

MS APPEAL BRIEF - PATENTS
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is an appeal from the Final Rejection dated August 10, 2006¹ of Claims 1, 3-18 and 20-24. Applicants have provided the following Table of Contents for ease of reference.

¹ The Notice of Appeal was filed November 13, 2006. Applicants have filed a one-month extension of time herewith.

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(1) REAL PARTY IN INTEREST

The inventors assigned their interests in the invention to Kimberly-Clark Worldwide, Inc. The real party in interest is Kimberly-Clark Corporation, which is the corporate parent of Kimberly-Clark Worldwide, Inc.

(2) RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences that will directly affect, be directly affected by, or have a bearing on this appeal.

(3) STATUS OF CLAIMS

Claims 1, 3-18 and 20-24 are pending in the above-referenced application. Applicants previously cancelled claims 2 and 19. Claims 1, 3-18 and 20-24 (Appendix A) have been rejected and are all being appealed.

(4) STATUS OF AMENDMENTS

Applicants filed an Amendment After Final on October 10, 2006, wherein Applicants amended claims 16-18 and 23. In an Advisory Action mailed October 25, 2006, the Examiner entered the Amendment After Final and stated that the objections to claims 16-18 had been overcome. Accordingly, the rejected claims (Appendix A) are in the form as amended in the Amendment After Final.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

In general, the present invention relates to visually coordinated absorbent products (Specification at page 1, lines 4-5). Absorbent products, such as pads or panty liners, are typically made of one or more components, such as an outer cover or peel strip (Specification at page 1, lines 6-7). Such products, in turn, are often individually wrapped in a pouch or similar package, or are wrapped as a group of products, with a plurality of products, whether or not individually wrapped, being sold in bulk packaging (Specification at page 1, lines 7-10). Often, the various elements of the product, the individual packaging and the bulk packaging are individually designed, without any effort to coordinate the appearance or aesthetics of the various components (Specification at page 1, lines 10-13). As such, the consumer is not made confident that the overall product, including for example the pad, the pouch and the packaging, were designed together (Specification at page 1, lines 19-21).

In addition, a consumer may not want others to know that they are carrying an absorbent product, such as an individually packaged pad (Specification at page 1, lines 24-25). Rather, the consumer would prefer that the product is masked or otherwise disguised (Specification at page 1, lines 25-26). Current pouches are typically made from a relatively heavy, uniform-micro embossed, uniform-colored film, which functions to prevent an

observer from discerning what is in the pouch, but which can be relatively bulky and expensive (Specification at page 1, lines 26-29). Conversely, lighter, less-expensive materials are typically more see-through, thereby allowing the observer to discern the contents of the pouch (Specification at page 1, lines 29-30). Current pouches also are often configured in rectangular shapes containing linear lines (Specification at page 2, line 1). The combination of the material and construction can give the wrapped product an appearance easily recognized by others as an absorbent product (Specification at page 2, lines 1-3).

For all of these reasons, a need remains for an absorbent product that is visually coordinated with itself and/or with its packaging, and which is not discernable through or by its packaging.

With reference to independent claim 1, a visually coordinated absorbent product includes a product component 10 having a body side liner 44, a garment side outer cover 46 and an absorbent core 48 disposed between the body side-liner and the garment-side outer cover (Specification at page 6, lines 10-15; FIGS. 3, 6 and 7). A peel strip 28 is removably connected to the garment side outer cover (Specification at page 6, line 30 to page 7, line 7; FIGS. 3, 6, and 7). The product component has at least a first and second visual characteristic (Specification at page 13, lines 6-20; at page 17, line 23 to page 19, line 19; FIGS. 7-13), wherein the first visual characteristic is different than the second visual characteristic (Specification at page 13, lines 23 to page 14, lines 10; Specification at page 14, lines 20-26; FIGS. 7-13). When configured as colors, the first and second visual characteristics are “different,” for example, when they have a different hue, luminosity and/or saturation/vividness (Specification at page 14 line 20 to page 15, line 6). The product

component is disposed in a packaging component 50, 76 having at least the first and second visual characteristics (Specification at page 12, lines 11-29; page 13, lines 6-9).

With reference to dependent claims 3 and 4, the product component 10 includes a substrate 5 disposed between the body side liner 44 and the absorbent core 48 (Specification at page 8, lines 17-26; FIG. 6).

With reference to independent claim 5, a visually coordinated absorbent product includes a product component 10 having a body side liner 44, a garment side outer cover 46 and an absorbent core 48 disposed between the body side-liner and the garment-side outer cover (Specification at page 6, lines 10-15; FIGS. 3, 6 and 7). The product component has at least a first and second visual characteristic (Specification at page 13, lines 6-20), wherein the first visual characteristic is different than the second visual characteristic (Specification at page 13, lines 23 to page 14, lines 10; Specification at page 14, lines 20-26). The product component is disposed in a packaging component 50, 76 having at least the first and second visual characteristics (Specification at page 12, lines 11-29; page 13, lines 6-9; FIGS. 1-3, 6 and 7). The first and second visual characteristics are first and second colors (Specification at page 12, line 11 to page 13, line 5; FIG. 13).

With reference to independent claim 14, a visually coordinated absorbent product includes a product component 10 having a body side liner 44, a garment side outer cover 46 and an absorbent core 48 disposed between the body side-liner and the garment-side outer cover (Specification at page 6, lines 10-15; FIGS. 3, 6 and 7). The product component has at least a first and second visual characteristic (Specification at page 13, lines 6-20; at page 17, line 23 to page 19, line 19; FIGS. 7-13), wherein the first visual characteristic is different than the second visual characteristic (Specification at page 13, lines 23 to page 14, lines 10;

Specification at page 14, lines 20-26). The product component is disposed in a packaging component 50 sized and configured to hold a single, individual product component (Specification at page 8, line 30 to page 9, line 1; at page 9, lines 3-30; at 10, lines 8-13; FIGS 1-3 and 6). The packaging component 50 has at least the first and second visual characteristics (Specification at page 12, lines 11-29; page 13, lines 6-9). The packaging component includes a wrapper element 52 (Specification at page 9, line 18 to page 10, line 10; FIGS 1-3 and 6), and a fastening element 72 releasably securing the packaging component in a closed configuration (Specification at page 11, lines 1-19; FIGS 1-3 and 6). The wrapper element 52 has the first visual characteristic, while the fastening element 72 has the second visual characteristic (Specification at page 13, lines 20-22).

With reference to independent claim 16, a visually coordinated absorbent product includes a product component 10 having a body side liner 44, a garment side outer cover 46 and an absorbent core 48 disposed between the body side-liner and the garment-side outer cover (Specification at page 6, lines 10-15; FIGS. 3, 6 and 7). The product component has at least a first and second visual characteristic (Specification at page 13, lines 6-20; at page 17, line 23 to page 19, line 19; FIGS. 7-13), wherein the first visual characteristic is different than the second visual characteristic (Specification at page 13, lines 23 to page 14, lines 10; Specification at page 14, lines 20-26). The product component is disposed in a packaging component 50, 76 having at least the first and second visual characteristics (Specification at page 12, lines 11-29; page 13, lines 6-9). The packaging component includes a spunbond material (Specification at page 10, lines 1-7).

With reference to dependent claim 17, the spunbond material of the packaging material has a basis weight of less than about 1.0 osy (Specification at page 3, lines 1-19;

page 10, lines 6-7). With reference to dependent claim 23, the spunbond material is seen through (Specification at page 1, lines 29-30; page 3, lines 14-19; page 10, lines 6-7; at page 15, lines 7-15; page 17, lines 15-22).

With reference to independent claim 18, a visually coordinated absorbent product includes a product component 10 having a body side liner 44, a garment side outer cover 46 and an absorbent core 48 disposed between the body side-liner and the garment-side outer cover (Specification at page 6, lines 10-15; FIGS. 3, 6 and 7). The product component has at least a first and second visual characteristic (Specification at page 13, lines 6-20), wherein the first visual characteristic is different than the second visual characteristic (Specification at page 13, lines 23 to page 14, lines 10; Specification at page 14, lines 20-26). The product component is disposed in a first packaging component 50 having at least the first and second visual characteristics (Specification at page 12, lines 11-29; page 13, lines 6-9; FIGS. 1-3, 6 and 7). The first packaging component 50 is disposed in a second packaging component 76 having at least the first and second visual characteristics (Specification at page 12, lines 4-10; at page 12, line 30 to page 13, line 5).

With reference to independent claim 22, a visually coordinated absorbent product includes a product component 10 having a body side liner 44, a garment side outer cover 46 and an absorbent core 48 disposed between the body side-liner and the garment-side outer cover (Specification at page 6, lines 10-15; FIGS. 3, 6 and 7). The product component has at least a first and second visual characteristic (Specification at page 13, lines 6-20), wherein the first visual characteristic is different than the second visual characteristic (Specification at page 13, lines 23 to page 14, lines 10; Specification at page 14, lines 20-26). The product component is disposed in a first packaging component 50 having at least the first and second

visual characteristics (Specification at page 12, lines 11-29; page 13, lines 6-9; FIGS. 1-3, 6 and 7). The first packaging component includes a wrapper element 52 (Specification at page 9, line 18 to page 10, line 10; FIGS 1-3 and 6), and a fastening element 72 releasably securing the packaging component in a closed configuration (Specification at page 11, lines 1-19; FIGS 1-3 and 6). The wrapper element 52 has the first visual characteristic, while the fastening element 72 has the second visual characteristic (Specification at page 13, lines 20-22). The first packaging component 50 is disposed in a second packaging component 76 having at least the first and second visual characteristics (Specification at page 12, lines 4-10; at page 12, line 30 to page 13, line 5; FIGS. 1 and 4).

The presently claimed absorbent product provides the user with an impression that the product is of high quality, and that the product and packaging were designed together, rather than piece meal (Specification at page 3, lines 5-8). In addition, the visually coordinated product and packaging provides the user with an emotional benefit, allowing them to feel more feminine with respect to female absorbent products, and to feel better about the product they are using (Specification at page 3, lines 8-11). The coordination of the elements of the absorbent products, or the coordination of the absorbent product with the packaging, also allows the manufacturer to use a relatively see-through packaging material without sacrificing the ability to hide the contents of the packaging (Specification at page 3, lines 14-17). For example, a relatively light basis weight non-woven material can be used for the packaging, thereby reducing the overall costs of the product (Specification at page 3, lines 17-19).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 11-13 and 15 are unpatentable as being made obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and International Publication No. WO 02/30347 to Farris.

Whether claims 3 and 4 are unpatentable as being made obvious over Molina in view of Batra and Farris.

Whether claims 5-10 and 24 are unpatentable as being made obvious over Molina in view of Batra and Farris.

Whether claim 14 is unpatentable under 35 U.S.C. 103 as being made obvious over Molina in view of Batra and U.S. Patent Application Publication No. US 2002/0148749 to Briseboi.

Whether claim 14 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra.

Whether claim 16 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra and U.S. Patent No. 6,802,833 to Kudo.

Whether claim 16 is unpatentable under 35 U.S.C. 103 as being made obvious over Molina in view of Batra and Kudo.

Whether claim 17 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra and Kudo.

Whether claim 17 is unpatentable under 35 U.S.C. 103 as being made obvious over Molina in view of Batra and Kudo.

Whether claim 23 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra and Kudo.

Whether claim 23 is unpatentable under 35 U.S.C. 103 as being made obvious over Molina in view of Batra and Kudo.

Whether claims 18 and 21 are unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra.

Whether claim 20 is unpatentable under 35 U.S.C. 103 as being made obvious over Briseboi in view of Batra.

Whether claim 22 is unpatentable under 35 U.S.C. 102 as being anticipated by Briseboi.

(7) ARGUMENT

1. Claims 1, 11-13 and 15² are Not Obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and International Publication No. WO 02/30347 to Farris.

Claim 1 recites “*a peel strip removably connected to [a] garment side outer cover over a garment attachment adhesive, wherein at least a portion of said garment side outer cover is configured with said first visual characteristic and at least a portion of said peel strip is configured with said second visual characteristic; and a packaging component having at least said first and second visual characteristics, wherein said product component is disposed in said packaging component.*” Applicants respectfully submit that there is no suggestion to combine Molina, Batra and Farris as asserted by the Examiner.

² Applicants note that the Examiner has indicated that claims 2 and 19 are rejected (Office Action at page 15-19). Applicants previously cancelled claims 2 and 19. Accordingly, Applicants have not addressed those claims in this Brief.

First, the Examiner asserts that “one would have been motivated to modify the packaging system of Molina et al. to have a first and a second characteristic, as taught by Batra, since . . . Molina discloses that *any indicator* may be used to indicate the article’s performance characteristic” (Office Action 16 (emphasis added)). Applicants respectfully disagree.

In particular, Molina does not disclose that “any indicator” may be used, but rather that indicators visible through a window in the package, such as “color, shape, size, or the like of the article,” are suitable (Molina at Col. 4, lines 52-67; Col. 2, lines 54-58). Indeed, the entire premise of Molina is to solve the problem of selecting a properly suited product by way of visual inspection without opening a package (Molina at Col. 1, lines 42-64). Accordingly, there is no suggestion to configure a garment side outer cover of a pad, as taught by U.S. Patent No. 4,556,146 to Swanson (see Office Action at 16), with indicia, as taught by Molina, since the outer cover is *completely covered* by the peel strip, and would not be visible to the user *without* opening the package. Indeed, the Examiner acknowledges that Molina “[does] not expressly disclose that the outer cover comprises the visual indicator” (Office Action at 16), but instead refers to Farris for that purported teaching.

Farris, however, does not add anything to the mix. Farris, as with Molina, does not disclose or suggest first and second indicia on both the product and packaging, but rather only a single indicia of color intensity (*see, e.g.,* Farris at Abstract). Moreover, Farris is directed to comparing different color intensities as applied to *different* products having varying degrees of a predetermined product performance characteristic (*id.*). Nothing in Farris discloses or suggests two *different indicia* on a product and on a package, let alone that such indicia are applied to a peel strip and outer cover. Moreover, Farris teaches against

applying such indicia to a portion of the product that would not be visible (e.g., the outer cover of Swanson as incorporated into Molina), since the entire premise of Farris is to provide the user with an indicator of product performance when selecting the product (*see, e.g., Farris at 3*).

Moreover, there is no suggestion to modify Molina by incorporating the indicia of Batra, since the indicia of Batra do not provide any information about the predetermined performance characteristics of the product. As a threshold matter, the indicia of Batra on the product are *not* identical to the indicia on the packaging (Col. 5, lines 62-64). Thus, even if the two indicia are “matched,” which requires, for example, a number of steps to convert the first indicia to the second indicia (Batra at Col. 6, lines 30-56), the lack of identity obfuscates the relationship between the two, which is contrary to the teachings of Molina. Accordingly, there is no suggestion to combine Batra with Molina and Farris.

Finally, although Batra teaches first and second indicia, those indicia are individually applied to the product and the packaging respectively (*see e.g., Col. 2, lines 54-56*). Batra does not disclose or suggest that *both* of the first *and* second indicia are applied to *each* of the product and packaging. For example, FIG. 1 of Batra discloses a first latticework without decorative markings having only a first visual characteristic (not the claimed first and second characteristics), while FIGS. 2A-2C are second latticeworks matched to the first latticework of FIG. 1 (Batra at Col. 2, lines 5-17).

Conversely, even if one considers *both* of the first *and* second latticeworks of Batra to have first and second visual characteristics (Office Action at 2 (1.b.)), there is no suggestion that they be applied separately to different components, such as a garment side outer cover and a peel strip as recited in claim 1. Rather, the entire premise of Batra is to integrate the

latticework and decorative markings in *a single pattern* such that the various elements of the first indicia may be combined to form an individual cell and a “different” latticework of a second indicia (Batra at Col. 6, lines 13-15; FIGS. 1-2B). Accordingly, there is no suggestion to separate the latticework and decorative markings of Batra, and apply them to different components of Molina. As such, even if combined, the references fail to disclose or suggest all of the recitations of claim 1.

For all of these reasons, Applicants submit that the Examiner has failed to make out a *prima facie* case of obviousness with respect to claims 1, 11-13 and 15.

Applicants note that the Examiner asserts that the “test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references.” (Office Action at 2). Without disputing the accuracy of that assertion, Applicants respectfully submit that the Examiner is doing just that – namely bodily incorporating the features of Batra into Molina using hindsight analysis (MPEP 2141 (“the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention”); see also MPEP 2141.01 and MPEP 2143.01 (fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness, *citing In re Mills*, 916 F.2d 680, 16 USPQ 1430 (Fed. Cir. 1990)). Moreover, the proposed modification cannot render the prior art unsatisfactory for its intended purpose (MPEP 2143.01, *citing In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1994). In the present case, the Examiner’s suggested combination would render Molina unsatisfactory for its intended purpose, namely to advise the user about the performance characteristics of a product without having to open the package. Moreover, when taken as a whole, the

references teach against the claimed combination (*see* MPEP 2141 both the claimed invention *and the references* must be considered as a whole).

For all of these reasons, the Examiner has not made out a *prima facie* cases of obviousness, and Applicants respectfully request that the Examiner's rejections be reversed.

2. Claims 3 and 4 are Not Obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and International Publication No. WO 02/30347 to Farris

At the outset, Applicants note that claims 3 and 4 depend from claim 1, and are therefore patentable for all of the reasons set forth above. Moreover, as just noted, Molina teaches against applying color indicia to a component that is not visible to the user, and would not therefore aid the user in the selection of the product. Indeed, the Examiner's assertion that "Molina discloses that the product may be colored and Farris et al. discloses that any part of the product may comprise the visual indicators" (Office Action at 17-18) ignores the entire premise and teaching of those references, namely that such coloration is used to select the product. Accordingly, and contrary to the Examiner's assertions, those references do *not* disclose, and in fact teach against, providing a substrate "disposed between said body side liner and said absorbent core," which is not visible to the user when packaged, with "one of said first and second visual characteristics." Accordingly, claims 3 and 4 are patentable for this additional reason.

3. Claims 5-10 and 24 are Not Obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and International Publication No. WO 02/30347 to Farris

Claim 5 recites that the "first and second visual characteristics comprise first and second colors." As set forth by the Examiner, "the 'indicia' of Batra may comprise a

latticework and decorative markings, each of which may be considered a first or a second indicia” (Office Action at 2). The latticework and decorative markings, however, are not “first and second colors.”

Although the Examiner later states that “the first and second visual characteristics may comprises colors,” her reliance on Batra (Office Action at 18, citing Batra at Col. 6, lines 41-56) is misplaced. Batra does not disclose or suggest using the *same* first and second colors on each of the product and packaging components, but rather merely that a *color change* may be one of the steps required to convert one indicia to another. If anything, this passage of Batra teaches *against* using the same color for each of the first and second indicia as recited in claim 5.

Moreover, Applicants respectfully submit that one of skill in the art also would not be motivated to combine Batra and Molina when those references are considered in their entirety. In particular, Batra discloses that the first and second indicia on the product and packaging components “are *not identical*,” “that is to say the indicia disposed on the tissue 10 and the indicia disposed on the packaging are *not the same*” (Batra at Col. 5, lines 62-63) (emphasis added). In contrast, Molina emphasizes the importance of having “substantially similar or the same [signal] color[s]” on the wrapper 9 and the container 37 (Molina at Col. 4, lines 42-45). In this way, the user is advised of the performance characteristics of the product. If the product had different signal colors, the consumer could be confused about such characteristics. Accordingly, for this additional reason, the Examiner has failed to make out a prima facie case of obviousness.

Molina, however, further teaches away from having *two* indicia on the *same* product and also on a packaging component. In particular, Molina discloses that the color on the

product coordinates with the color on the packaging to indicate performance characteristics (Col. 4, lines 55-65). While Molina discloses that a kit might have different signal colors, the individual products within the kit *never* would, as that would confuse the user as to the performance characteristic associated with that product (Col. 6, lines 42-60). Simply put, having multiple colors on the *product* of Molina would render the invention unsatisfactory for its intended purpose (MPEP 2143.01). While the Examiner argues that “no such statement” is made in Molina, such argument misses the point (Office Action at 3). When viewing Molina as a whole, Molina teaches against providing more than one color on a product, since such multiple indicia would confuse the user as to which performance characteristic was associated with that particular product (Molina at Col. 4, lines 42-67).

For all of these reasons, Applicants respectfully submit that the Examiner’s rejections of claims 5-10 and 24 be withdrawn.

4. Claim 14 is Not Obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and U.S. Patent Application Publication No. US 2002/0148749 to Briseboi

Claim 14 recites “a packaging component sized and configured to hold a *single, individual* product component,” and that the “packaging component comprises a *wrapper* element having said first visual characteristic and a fastening element having said second visual characteristic.” Claim 14, which previously depended from claim 1, is patentable over Molina and Batra for all of the reasons set forth above with respect to claim 1.

Moreover, neither Molina nor Batra disclose a packaging component having “a wrapper element having a first visual characteristic and a fastening element having a second visual characteristic,” wherein the packaging component is “sized and configured to hold a

single, individual product component,” let alone that those characteristics are coordinated with first and second visual characteristics of a product component. Indeed, the Examiner expressly acknowledges this when stating that “Molina et al. in view of Batra . . . do not expressly disclose that packaging component (either first or second) comprises a wrapper element having the first characteristic and a fastening element having the second visual characteristic and releasably securing the packaging component in a closed configuration” (Office Action at 14). Instead, the Examiner relies on Briseboi.

Applicants are confused as to what part of Briseboi is being applied as the fastening element – whether it is the “tear-away strip” referred to in the rejection of claim 14 over Briseboi in view of Batra (Office Action at 5 and 9), or the “reminder tag” of Briseboi. The Office Action is deficient and ambiguous on this count (see Office Action at 13-15).

Nonetheless, in an effort to respond, Applicants first assume that the Examiner is applying the “reminder tag” 704 of Briseboi (FIG. 7; para. 45) as the fastening element. With respect to the embodiment of Figure 7 in Briseboi, Applicants submit that both indicia are on the reminder tag, not on the wrapper. In essence, Briseboi teaches indicia 106 and 108 as being both on the wrapper or both on the fastening element, but not one on each!

Applicants further respectfully submit that there is no suggestion to combine Briseboi with Molina and Batra as suggested by the Examiner. In particular, the entire premise of Briseboi, as with Molina, is to provide a system wherein the user knows what the product is inside *without* having to open the individual package (para. 7):

A particular problem occurs when the user carries in her purse or pocket one or more individual packaged sanitary napkins. Since the packaging (pouch) found on sanitary napkins today is opaque, a simple visual inspection of the pouch will not reveal to the user the characteristics of the sanitary napkin in the package, such as its liquid absorption capacity, configuration or type of

material used in the construction of the sanitary napkin, among others. The user is left with the option of removing the sanitary napkin from the pouch to ascertain if it is of the type she now requires. However, the removal of the sanitary napkin from the pouch usually results in the destruction of the pouch. If it turns out the sanitary napkin is of the type unsuitable for the immediate need, the sanitary napkin is wasted.

Accordingly, there is no suggestion, and in fact Briseboi teaches against, putting first and second indicia on the product.

In addition, as noted above, Batra teaches only that first and second indicia are individually applied to the product and the packaging respectively (see e.g., Col. 2, lines 54-46), not that *both* of the first and second indicia are applied to *each* of the product and packaging. Accordingly, even if combined, Briseboi and Batra fail to disclose all of the limitations of claim 14.

Moreover, even if Batra discloses both indicia on both the product and packaging, Batra teaches against separating those indicia (which form an integral pattern) and applying them to different components as explained above. Simply put, there is no suggestion to combine Molina, Batra and Briseboi.

Next, we assume that the Examiner is asserting that the fastening element is a “tear-away strip” 178 of Briseboi (Briseboi at para. 53, FIG. 10), which is employed on a receptacle 102 holding a plurality of individual products. The Examiner asserts that “it is further noted that the language ‘packaging component is sized and configured to hold a single, individual product component’ only requires that the package be capable of doing such and that a ‘single, individual product component’ may exist among a plurality of product components” (Office Action at page 9; see also Office Action at page 5). Such an assertion is misplaced and does not properly define the scope of claim 14.

At the outset, the language requires that the packaging component is sized and configured to hold a “*single, individual*” product component. The plain meaning of those terms is just that – the packaging component holds a single, individual product component, not a plurality thereof. If the packaging component is configured as taught by Briseboi, it is not sized to hold a single, individual product component, but rather a plurality of such products.

The Examiner’s interpretation further ignores the claim language reciting that the packaging component comprises a “wrapper element.” It is clear from the specification that the term wrapper element 52, as understood by one of ordinary skill in the art, refers to a web of material surrounding a single, individual product component (Specification at 9, lines 18-20; at page 12, lines 11-22; FIGS. 1-3). In summary, the bulk receptacle 102 of Briseboi simply does not read on the claim recitations of claim 14 as properly interpreted.

For all of these reasons, claim 14 is patentable over the cited references and the Examiner’s rejections should be reversed.

5. Claim 14 is Not Obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi in view of U.S. Patent No. 6,520,330 to Batra

With respect to the rejection of claim 14 over Briseboi and Batra, Applicants submit that claim 14 is patentable for all of the reasons set forth above with respect to claim 1, and with respect to the rejection of claim 14 over Molina in view of Briseboi and Batra.

6. Claim 16 is Not Obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi in view of U.S. Patent No. 6,520,330 to Batra and U.S. Patent No. 6,802,833 to Kudo

Claim 16 previously depended from claim 1 and is patentable for all of the reasons set forth above with respect to claim 1. In particular, the combination of Briseboi and Batra

suffers the same deficiencies as the combination of Molina and Batra. In particular, Briseboi is directed to a system wherein the user knows what the product inside is *without* having to open the individual package (para. 7). Indeed, Briseboi is totally devoid of any teaching of applying the “visual reference system”¹⁰⁴ to the *product component*; rather the tags are secured only to the packaging components (*see, e.g.*, Briseboi at para. 35; FIGS. 1-11).

Moreover, as explained above, Batra teaches that the first and second indicia are not identical. Simply put, there is no suggestion to substitute the non-identical pattern indicia of Batra, which does not provide any instructions about performance, for the tags of Briseboi. Put another way, the indicia of both references are directed to entirely different functions, and one of skill in the art would not find it obvious to incorporate the patterns of Batra for the indicia tags of Briseboi. Indeed, such a combination would render Briseboi unsatisfactory for its intended purpose.

Accordingly, claim 16 should be passed to allowance.

7. Claim 16 is Not Obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and U.S. Patent No. 6,802,833 to Kudo

Claim 16 is patentable for all of the reasons set forth above with respect to claim 1 as it pertains to the lack of motivation to combine Molina and Batra. The Examiner has cited Kudo merely for the recitation of a spunbond material. Kudo, however, does not supply any of the deficiencies of Molina or Batra, or suggest a combination thereof. Accordingly, the Examiner’s rejection of claim 16 should be reversed.

8. Claim 17 is Not Obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi in view of U.S. Patent No. 6,520,330 to Batra and U.S. Patent No. 6,802,833 to Kudo

Claim 17 depends from claim 16 and is therefore patentable for all of the same reasons as claim 16. Claim 17 further recites that “said non-woven material has a basis weight of less than about 1.0 osy.” As set forth above, the entire premise of Briseboi, as with Molina, is to provide a system wherein the user knows what the product is inside *without* having to open the individual package (para. 7):

A particular problem occurs when the user carries in her purse or pocket one or more individual packaged sanitary napkins. Since the packaging (pouch) found on sanitary napkins today is opaque, a simple visual inspection of the pouch will not reveal to the user the characteristics of the sanitary napkin in the package, such as its liquid absorption capacity, configuration or type of material used in the construction of the sanitary napkin, among others. The user is left with the option of removing the sanitary napkin from the pouch to ascertain if it is of the type she now requires. However, the removal of the sanitary napkin from the pouch usually results in the destruction of the pouch. If it turns out the sanitary napkin is of the type unsuitable for the immediate need, the sanitary napkin is wasted.

To solve this problem, Briseboi discloses the use of visual reference system. If the package were “see-through” as disclosed in Kudo, then there would be no need for such a system. Accordingly, Briseboi teaches away from making the packaging material from a low basis weight spunbond material, or a material that is “see-through.” Clearly, one of skill in the art, when viewing Briseboi, would not be motivated to use the package of Kudo.

Accordingly, the Examiner’s rejection of claim 17 should be reversed for this additional reason.

9. Claim 17 is Not Obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and U.S. Patent No. 6,802,833 to Kudo

The Examiner rejected claim 17 as being unpatentable over Molina in view of Batra and Kudo without any substantive discussion. Instead, the Examiner merely refers to the “previously discussion of these claims over Briseboi et al. in view Batra . . in further view of Kudo” (Office Action at 15). Accordingly, Applicants respond that claim 17 is patentable over Molina in view of Batra and Kudo for the same reasons set forth above with respect to claim 1 and with respect to the rejection over Briseboi in view of Batra and Kudo.

Indeed, Molina, as with Briseboi, is directed to providing a signal color on the wrapper, which avoids the need to open the wrapper. If the package were “see-through” as disclosed in Kudo, then there would be no need for such a system. Accordingly, Molina teaches away from making the packaging material from a low basis weight spunbond material.

For at least these additional reasons, the Examiner’s rejection of claim 17 should be reversed.

10. Claim 23 is Not Obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi in view of U.S. Patent No. 6,520,330 to Batra and U.S. Patent No. 6,802,833 to Kudo

Claim 23 depends from claim 17 and is therefore patentable for all of the same reasons as claim 17. Claim 23 further recites that “said spunbond material is see-through.” As set forth above with respect to claim 17, Briseboi teaches away from making the packaging material from a see-through spunbond material.

Accordingly, the Examiner’s rejection of claim 23 should be reversed.

11. Claim 23 is Not Obvious over U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 6,520,330 to Batra and U.S. Patent No. 6,802,833 to Kudo

The Examiner rejected claim 23 as being unpatentable over Molina in view of Batra and Kudo without any substantive discussion. Instead, the Examiner merely refers to the “previously discussion of these claims over Briseboi et al. in view Batra . . in further view of Kudo” (Office Action at 15). Accordingly, Applicants respond that claim 23 is patentable over Molina in view of Batra and Kudo for the same reasons set forth above with respect to claim 1 and with respect to the rejection over Briseboi in view of Batra and Kudo.

Indeed, Molina, as with Briseboi, is directed to providing a signal color on the wrapper, which avoids the need to open the wrapper. If the package were “see-through” as disclosed in Kudo, then there would be no need for such a system. Accordingly, Molina teaches away from making the packaging material from a material that is “see-through.”

Accordingly, the Examiner’s rejection of claim 23 should be reversed

12. Claims 18 and 21 are Not Obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi in view of U.S. Patent No. 6,520,330 to Batra

Claim 18 recites a “*product component [comprising] at least first and second visual characteristic; a first packaging component having said at least said first and second visual characteristics, wherein said product component is disposed in said first packaging component; and a second packaging component having said at least said first and second visual characteristics, wherein said first packaging component is disposed in said second packaging component.*” Claim 18 is patentable for all of the reasons set forth above with respect to claim 16.

In particular, Briseboi is directed to a system wherein the user knows what the product is inside *without* having to open the individual package (para. 7). Indeed, Briseboi is

totally devoid of any teaching of applying the “visual reference system”¹⁰⁴ to the product component; rather the tags are secured only to the packaging components (*see, e.g.*, Briseboi at para. 35; FIGS. 1-11).

Moreover, as explained above, Batra teaches that the first and second indicia are not identical. Simply put, there is no suggestion to substitute the non-identical pattern indicia of Batra, which does not provide any instructions about performance, for the tags of Briseboi. Put another way, the indicia of both references are directed to entirely different functions, and one of skill in the art would not find it obvious to incorporate the patterns of Batra for the indicia tags of Briseboi. Indeed, such a combination would render Briseboi unsatisfactory for its intended purpose.

For at least these reasons, the Examiner’s rejections of claim 18 and 21 should be reversed.

13. Claim 20 is Not Obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi in view of U.S. Patent No. 6,520,330 to Batra

Claim 20 depends from claim 18 and is patentable for all of the reasons set forth above with respect to claim 18. In addition, claim 20 further recites that “said first and second visual characteristics comprise first and second colors.” As set forth above with respect to claim 5, Batra teaches away from using first and second colors as the first and second indicia. Accordingly, the Examiner’s rejection of claim 20 should be withdrawn for at least this additional reason.

14. Claim 22 is Not Anticipated by U.S. Patent Application Publication No. US 2002/0148749 to Briseboi

Claim 22 recites “a first packaging component having at least first and second visual characteristics, wherein said product component is disposed in said first packaging

component, *wherein said first packaging component comprises a wrapper element having said first visual characteristic and a fastening element having said second visual characteristic; and a second packaging component having said at least said first and second visual characteristics*, wherein said first packaging component is disposed in said second packaging component.”

Similar to the analysis above with respect to claim 14, the “wrapper” and fastening element (tear-aways strip) (Office Action at 2-3) of Briseboi are applied to different packaging components, not to each of *two* packaging components, one disposed in the other, with each having first and second visual characteristics. Rather, the tear away strip 178 of Briseboi is for the receptacle 102 that holds a plurality of pouches 310.

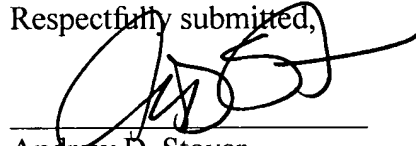
With respect to the embodiment of Figure 7 in Briseboi, Applicants submit that both indicia are on the reminder tag, not on the wrapper. In essence, Briseboi teaches indicia 106 and 108 as being both on the wrapper or both on the fastening element, but not one on each! Nowhere in paragraph 17 of Briseboi, as cited by the Examiner (Office Action at 5 and 7-8), is it taught that the indicia 106 are applied to one of the wrapper and fastening element and the other indicia 108 are applied to the other of the wrapper and fastening element. Indeed, Briseboi discloses that the two elements of information 106, 108 are maintained *together* on the visual reference system. Accordingly, not only are not all of the limitations taught by Briseboi, as required by 35 USC 102, Briseboi actually teaches away from any modification to satisfy those limitations.

For these reasons, the Examiner’s rejection of claim 22 should be withdrawn.

15. Conclusion

The cited references do not provide a valid basis for any rejection of the present claims. Accordingly, Appellants submit that the present inventions are fully patentable over the cited references, and the Examiner's rejections should be REVERSED.

Respectfully submitted,



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APPENDIX A

The claims at issue in this appeal are as follows:

1. A visually coordinated absorbent product comprising:

a product component comprising a body side liner, a garment side outer cover and an absorbent core disposed between said body side liner and said garment side outer cover, wherein said product component has at least a first and second visual characteristic, wherein said first visual characteristic is different than said second visual characteristic, wherein said product component comprises a peel strip removably connected to said garment side outer cover over a garment attachment adhesive, wherein at least a portion of said garment side outer cover is configured with said first visual characteristic and at least a portion of said peel strip is configured with said second visual characteristic; and

a packaging component having at least said first and second visual characteristics, wherein said product component is disposed in said packaging component.

3. The visually coordinated absorbent product of claim 1 wherein said product component further comprises a substrate disposed between said body side liner and said absorbent core, wherein said substrate has one of said first and second visual characteristics.

4. The visually coordinated absorbent product of claim 3 wherein said substrate comprises at least one of a tissue layer and a surge layer.

5. A visually coordinated absorbent product comprising:

a product component comprising a body side liner, a garment side outer cover and an absorbent core disposed between said body side liner and said garment side outer cover, wherein said product component has at least a first and second visual characteristic, wherein said first visual characteristic is different than said second visual characteristic; and

a packaging component having at least said first and second visual characteristics, wherein said product component is disposed in said packaging component, and wherein said first and second visual characteristics comprise first and second colors.

6. The visually coordinated absorbent product of claim 5 wherein said first color is white and wherein said second color is selected from the group consisting of black, yellow, orange, purple, green, red, blue and pink.

7. The visually coordinated absorbent product of claim 5 wherein said first color of said product component has a first hue and wherein said first color of said packaging component has a second hue, wherein said first hue is within about 120° of said second hue.

8. The visually coordinated absorbent product of claim 7 wherein said second color of said product component has a third hue and wherein said second color of said packaging component has a fourth hue, wherein said third hue is within about 120° of said fourth hue.

9. The visually coordinated absorbent product of claim 7 wherein said first color of said product component has a first value and wherein said first color of said packaging component has a second value, wherein the difference between said first and second values is within 1% of maximum.

10. The visually coordinated absorbent product of claim 7 wherein said first color of said product component has a first saturation and wherein said first color of said packaging component has a second saturation, wherein the difference between said first and second saturations is within 2.5% of maximum.

11. The visually coordinated absorbent product of claim 1 wherein at least one of said first and second visual characteristics comprises an embossment.

12. The visually coordinated absorbent product of claim 1 wherein at least one of said first and second visual characteristics comprises a pattern.

13. The visually coordinated absorbent product of claim 1 wherein said packaging component is sized and configured to hold a single, individual product component.

14. A visually coordinated absorbent product comprising:

a product component comprising a body side liner, a garment side outer cover and an absorbent core disposed between said body side liner and said garment side outer cover, wherein said product component has at least a first and second visual characteristic, wherein said first visual characteristic is different than said second visual characteristic; and

a packaging component sized and configured to hold a single, individual product component, said packaging component having at least said first and second visual characteristics, wherein said product component is disposed in said packaging component, and wherein said packaging component comprises a wrapper element having said first visual characteristic and a fastening element having said second visual characteristic, said fastening element releasably securing the packaging component in a closed configuration.

15. The visually coordinated absorbent product of claim 1 wherein said packaging component is sized and configured to hold a plurality of said product components.

16. A visually coordinated absorbent product comprising:

a product component comprising a body side liner, a garment side outer cover and an absorbent core disposed between said body side liner and said garment side outer cover, wherein said product component has at least a first and second visual characteristic, wherein said first visual characteristic is different than said second visual characteristic; and

a packaging component having at least said first and second visual characteristics, wherein said product component is disposed in said packaging component, wherein said packaging component comprises a spunbond material.

17. The visually coordinated absorbent product of claim 16 wherein said spunbond material has a basis weight of less than about 1.0 osy.

18. A visually coordinated absorbent product comprising:

a product component comprising a body side liner, a garment side outer cover and an absorbent core disposed between said body side liner and said garment side outer cover, wherein said product component comprises at least first and second visual characteristic;

a first packaging component having said at least said first and second visual characteristics, wherein said product component is disposed in said first packaging component; and

a second packaging component having said at least said first and second visual characteristics, wherein said first packaging component is disposed in said second packaging component.

20. The visually coordinated absorbent product of claim 18 wherein said first and second visual characteristics comprise first and second colors.

21. The visually coordinated absorbent product of claim 18 wherein at least one of said first and second visual characteristics comprises a pattern.

22. A visually coordinated absorbent product comprising:

a product component comprising a body side liner, a garment side outer cover and an absorbent core disposed between said body side liner and said garment side outer cover;

a first packaging component having at least first and second visual characteristics, wherein said product component is disposed in said first packaging component, wherein said first packaging component comprises a wrapper element having said first visual characteristic and a fastening element releasably securing said wrapper element in a closed configuration, said fastening element having said second visual characteristic; and

a second packaging component having said at least said first and second visual characteristics, wherein said first packaging component is disposed in said second packaging component.

23. The visually coordinated absorbent product of claim 17 wherein said spunbond material is see-through.

24. The visually coordinated absorbent product of claim 5 wherein said first and second colors are non-white and non-black.

APPENDIX B (EVIDENCE APPENDIX)

NONE

APPENDIX C (RELATED PROCEEDINGS APPENDIX)

NONE